

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Amendment of Section 73.606(b),) MM Docket No. 93-191
Table of Allotments,) RM-8088
TV Broadcast Stations (Pueblo, CO))

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To: The Commission

JOINT REPLY

The University of Southern Colorado (the "University"), licensee of Television Station KTSC(TV), Pueblo, Colorado, and Sangre de Cristo Communications, Inc. ("SCC"), licensee of Television Station KOAA-TV, Pueblo, Colorado, by their respective attorneys, jointly reply to the Opposition of The Pikes Peak Broadcasting Company ("Pikes Peak") to SCC's and the University's Joint Application for Review in the above-captioned proceeding.

Pikes Peak is in the unfortunate position of having to defend the Allocations Branch's (the "Staff") myopic and poorly reasoned decision in this proceeding.^{1/} Both Pikes Peak and the Staff manufacture meaningless distinctions in an attempt to support their illogical conclusions. Like the blind man in Aesop's fable about the elephant, they dwell on small, less significant details while ignoring the enormous and compelling benefit that the Channel Swap would bring to the citizens of Colorado. The essential, indeed elephantine point, is that the public interest will be served when a noncommercial station enhances its signal coverage, broadcasts to white areas, and

^{1/} Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations, (Pueblo, Colorado), MM Docket No. 93-191 (July 14, 1995) (the "Staff Decision"). Pikes Peak does not even understand what it purports to defend. Pikes Peak refers several times to the Staff's "grant" of the University's and SCC's proposal to swap channels (the "Channel Swap"). The Staff did not grant the Channel Swap, with or without KTSC's construction permit (the "Cheyenne Mountain Permit"). Pikes Peak's confusion on even this basic point epitomizes the legal errors and factual distortions throughout its Opposition and during its three-year effort to prevent the Channel Swap.

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receives significant financial assistance while a commercial station simultaneously increases competition in the marketplace with more effective coverage of its own.

Pikes Peak strains without success to argue that a construction permit for new facilities should be treated differently under the channel swap rule^{2/} than a construction permit for modified facilities. However, neither Section 1.420(h) nor the Commission decision adopting it makes any such distinction.^{3/} That the Commission realized that channel exchanges could result in monetary benefits enabling noncommercial stations to construct their facilities does not mean that channel exchanges are only available to permittees of new noncommercial stations. In fact, the Commission has held otherwise and allowed a noncommercial licensee to exchange its facilities with those of a commercial permittee.^{4/} Moreover, if, as Pikes Peak asserts, the rule's purpose is to "get noncommercial stations built and placed in operation,"^{5/} why is the procedure available to licensees? Pikes Peak's argument makes no sense.

Pikes Peak relies on one sentence of the Video Services Division's decision^{6/} granting the short-spacing waiver to make the erroneous argument that the waiver was based solely or

^{2/} 47 C.F.R. § 1.420(h) (1995).

^{3/} Amendments to the Television Table of Assignments to Change Noncommercial Educational Reservations, 59 RR 2d 1455 (1986), recon. denied, 3 FCC Rcd 2517 (1988). Pikes Peak also cites no authority for its erroneous assertion that short-spaced and fully-spaced facilities require disparate treatment under the channel exchange rule.

^{4/} Amendment of Section 73.606(b) (Clermont and Cocoa, Florida), 4 FCC Rcd 8320 (1989), recon. denied, 5 FCC Rcd 6566 (1990), aff'd sub nom., Rainbow Broadcasting Co. v. FCC, 949 F.2d 405 (D.C. Cir. 1991).

^{5/} Pikes Peak Opposition at 10.

^{6/} Letter from Barbara A. Kreisman to Thomas Aube, FCC File No. BPET-900122KE (Feb. 28, 1991).

principally on KTSC's noncommercial status.^{7/} The University has previously demonstrated that this is not the case,^{8/} and Pikes Peak's Opposition fails to show otherwise. The Commission determined that short-spaced Channel 8 operations from Cheyenne Mountain are in the public interest; whether the programming aired on Channel 8 is commercial or noncommercial was not--and could not constitutionally have been--the basis for that decision.

What is most revealing about Pikes Peak's true motivations is its distortion of the Channel Swap's public interest benefits. For the first time in its 29 pleadings in this and related proceedings, Pikes Peak claims that the University will not receive the full \$1 million endowment from SCC. Pikes Peak Opposition at 5, n.7. This is an obvious yet not surprising attempt by Pikes Peak to mislead the Commission. To set the record straight, attached hereto is a copy of the Affidavit of Gregory Sinn which outlines how the University would use the \$1 million endowment; \$150,000 will be used to expand its translator network; the remaining \$850,000 will be placed in an interest-bearing endowment. The University will use the \$50,000 it expects to earn annually in interest to expand its program offerings. That the University intends to use the interest rather than the principal from the endowment is a fiscal choice made by the University,

^{7/} Pikes Peak's illogic apparently knows no bounds. Pikes Peak tries to make the ridiculous argument that a station's noncommercial status is unrelated to the content of its programming. Pikes Peak Opposition at 9. It is well-established, however, that a station's noncommercial status is defined by the noncommercial content of its programming. See, e.g., Turner Broadcasting System, Inc. v. FCC, 114 S. Ct. 2445, 2460 (1994) ("... the privileges conferred by the must-carry provisions are also unrelated to content. The rules benefit all full power broadcasters who request carriage - be they commercial or noncommercial, independent or network-affiliated, English or Spanish, religious or secular") (emphasis added).

^{8/} See Joint Application for Review at 10-11; University and SCC Reply to Opposition of Ackerley Communications Group, Inc. at 2-3 (Sept. 13, 1995). Indeed, any other conclusion would have violated Commission precedent and basic First Amendment principles.

not SCC, and does not mean that the University will not control or obtain the full benefit from the endowment.^{9/} Nothing prevents the University from using the principal of the \$1 million endowment at any time.

Contrary to Pikes Peak's accusations, the University has not been "coerced" by SCC into abandoning its commitment to Colorado Springs.^{10/} The University has served and will continue to serve Colorado Springs. In fact, the citizens of Colorado Springs will receive better service if the Channel Swap is permitted; KTSC will transmit an improved signal from Baculite Mesa^{11/} that, together with the use of TV Translator K30AA, will provide substantially increased coverage of Colorado Springs. KTSC will use SCC's \$1 million endowment to enhance its educational programming and to expand its translator network to the Western Slope to provide first noncommercial educational television service to 82,871 residents.

The Commission should not be fooled by Pikes Peak's attempts to cloak itself in the public interest. Pikes Peak decided not to oppose the University's short-spacing waiver request,

9/ Pikes Peak blames the University for wanting a \$1 million endowment. Pikes Peak Opposition at 7. This is an odd sentiment for one claiming to be a supporter of educational television. See id. at 2. The endowment of course is now even more important than it was in 1992 due to recent cuts in federal funding for noncommercial stations. See Joint Application for Review at 14-15, n.36. Contrary to Pikes Peak's accusations, the University will receive far more than the \$1 million. The University will acquire new transmission and translator equipment and enjoy substantial gains in service to Colorado Springs and the Western Slope. See id. at 13-18. Moreover, even if the endowment were the only benefit to the University, the Commission cannot require that the public interest be served in more than one way. Rainbow Broadcasting Co. v. FCC, 949 F.2d at 413 (the channel exchange policy recognizes cash infusion of a noncommercial station as a way to promote the public interest; it does not require that channel exchanges promote the public interest in more than one way).

10/ Pikes Peak Opposition at 4-5.

11/ Pikes Peak ignores the fact that the University will assume KOAA's higher position on the tower at Baculite Mesa and will therefore transmit an improved signal over Colorado Springs.

not because of its touted "general support for educational television," but because a noncommercial station on Cheyenne Mountain was not a competitive threat. However, once KOAA, a commercial station, proposed to exchange its facilities for KTSC's Cheyenne Mountain Permit, Pikes Peak suddenly became concerned about Channel 8 operations on Cheyenne Mountain. Despite Pikes Peak's efforts to the contrary, this case is not about protecting its private interests. It is about a channel exchange that complies with Commission rules and precedent and provides a marketplace solution that will (1) ensure that the University, during a time of deep cuts in federal funding, continues to survive financially and provides quality noncommercial educational service to Pueblo, Colorado Springs and the Western Slope; (2) improve NBC network service to Colorado Springs; and (3) level the competitive playing field among commercial television stations serving Pueblo and Colorado Springs. Based upon the foregoing, the Commission must grant the Joint Application for Review and reverse the Staff Decision.

Respectfully submitted,

The University of Southern Colorado

By: Wayne Coy, Jr.
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September 13, 1995

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ATTACHMENT A

Affidavit of Gregory Sinn
(Submitted with Petition for Issuance of Notice of
Proposed Rulemaking to Exchange Channels, Sept. 8, 1992)

AFFIDAVIT OF GREGORY SINN

I, Gregory B. Sinn am general manager of Television Station KTSC-TV, I have served in that capacity for seven years.

The proposed rulemaking concerning an asset exchange between KOAA-TV (Channel 5) and KTSC-TV (Channel 8) will be of substantial short and long term benefit to KTSC-TV and the people of southern and western Colorado.

One significant and immediate benefit of the channel exchange is the exchange of KTSC-TV's current single 30 kw transmitter for a dual 30 kw (60 kw total) circular polarized transmitter currently used by KOAA-TV. This provides for an enhanced and stronger signal to our city of license. It also gives twice the reliability that two transmitters enable versus the single transmitter KTSC-TV now operates.

KTSC-TV is the leader in Colorado for providing a PBS service to unserved communities. KTSC-TV owns and operates more translators to reach isolated viewing areas than any other broadcast station in the state, with a total of 11. KTSC-TV has a long range plan to provide translators to unserved communities in an effort to expand public television service to remote or unserved communities. The following list shows the communities KTSC-TV has placed translators in and the year they were activated:

<u>Site</u>	<u>Year</u>
Colorado Springs	1977
Manitou Springs	1977
Aguilar	1980
Alamosa	1980
Del Norte	1980
La Veta	1980
Salida	1980
San Luis	1980
Trinidad	1980
Coaldale	1986
Cotopaxi	1986
Montrose	1992

Unfortunately, there are still areas of Colorado that do not receive PBS except via satellite delivery. These regions are on the Western Slope of the state and encompass approximately 208,000 people including the population centers of Grand Junction and Durango. The inclusion of these communities would provide a significant increase in new KTSC-TV viewers:

<u>Colorado Counties on Western Slope</u>	<u>1990 Census - Persons</u>	<u>Population Served with New Translators</u>
Mesa	93,145	65,995
Delta	20,980	
Montrose	24,423	
Ouray	2,295	
San Miguel	3,653	
Dolores	1,504	
San Juan	745	
La Plata	32,284	16,876
Montezuma	18,672	
Gunnison	<u>10,273</u>	
Total	207,974	82,871

KOAA-TV will provide KTSC-TV with \$1 million dollars. Their funds will enable KTSC-TV to fulfill its role in expanding its service to these communities. Using only 15% of the \$1 million endowment, we will further our primary mission of providing a high quality culturally diverse and free public television service to all the citizenry of our country. We plan to use \$150,000 for the following expansion of our translator system:

Service Expansion Costs

Microwave	-	Montrose to Grand Junction	\$25,000
Translator	-	Grand Junction	\$25,000
Microwave	-	Montrose to Ouray	\$25,000
Microwave	-	Ouray to Molas Divide	\$25,000
Microwave	-	Molas Divide to La Plata	\$25,000
Translator	-	Durango	<u>\$25,000</u>
Total			\$150,000

The remainder of the monies (\$850,000) will be placed in an endowment to broaden and expand the programming offerings of **KTSC-TV**. For the past four years **KTSC-TV** has attained the financial ability to provide the entire PBS roster of programming, but not programming commonly purchased beyond the PBS offerings. With the entry to communities like Grand Junction and Durango and the additional interest monies from the endowment provided by the **KOAA-TV** contribution, many of the additional programs that are requested by viewers may finally be included in the **KTSC-TV** schedule. We are projecting up to \$50,000 in income each year be directed towards programming efforts. **KTSC-TV** is also the leader in local programs, offering more local programming per week (outside of local news) than any other station in the market. The following series exemplify this effort:

STANDOFF -- the region's only live prime timed public affairs series incorporating a studio audience and live viewer call-ins;

MATCHWITS -- the regional high school knowledge bowl;

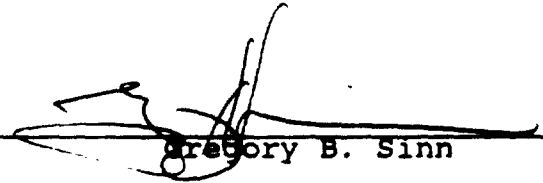
COLORADO HEALTH VIEW -- live with viewer call-ins regarding health matters;

CAPITAL JOURNAL -- covering the Colorado legislature from a regional perspective. These series are complimented with award winning documentaries that also tell the story of our area. **KTSC-TV** has a commitment to providing an opportunity for local issues to be addressed in a public forum. Discussion and examination of those topics that are important to the residents of southern and western Colorado has proven to be greatly appreciated. The selection of **KTSC-TV** as the PBS station to go to the Western Slope was decided by the County Commissioners of

Ouray, Delta and Montrose, Colorado, upon comparison of what KTSC-TV was providing in the way of a local voice for its viewers. This responsiveness to viewers was a major factor in KTSC-TV being selected over much larger KRMA-TV, Denver, in being carried on the Western Slope system. The endowment monies will also be used to expand and enhance the local programs KTSC-TV can offer regarding the smaller communities that generally do not get as much television exposure.

STATE OF
COUNTY OF PUEBLO } ss:

Subscribed and sworn to this 3rd day of September 1992.



Gregory B. Sinn

CERTIFICATE OF SERVICE

I, Vanese E. Hargrove, hereby certify that a copy of the foregoing "**Joint Reply**" was sent on this 13th day of September, 1995, via United States mail, postage prepaid, unless otherwise indicated, to the following:

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* Denotes Hand Delivery